

The Sydney Morning Herald.

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THURSDAY, DECEMBER 13 1849.

No. 3923

CASH TERMS FOR ADVERTISEMENTS.
For one inch and under, 2s.; and 1s. for every additional inch for each insertion.

FOR MORETON BAY DIRECT.

A REGULAR TRADER.
THE "HAWK" Schooner
CHAMPION,
Capt. O'Brien, now discharging
cargo, and will be ready
to receive cargo on Friday morning, and will
meet with her usual quick despatch. For
freight or passage apply to
JOHN MORRIS,
Albion Wharf, bottom of Market-street.
December 12. 10076

FIRST VESSEL FOR MELBOURNE.

THE "DAIT" packet
170 tons, George Bennett,
master, clear at the Customs
this day. For passage only, having been
specially fitted up for this trade,
apply to
SHEPPARD AND ALGER.
Pier Office, 479, George-street. 9071

FOR MELBOURNE DIRECT.

A REGULAR TRADER.
THE "A1" Passenger
ship
DIANA,
J. R. Peck, commander,
(now heavily repaired) having nearly all her
cargo ready to go on board, will meet with
quick despatch. The cabin of this vessel
has been beautifully fitted, and is very
comfortable. Beds, room, &c., found on board.
Beware of cheap offers for ladies.
For freight or passage apply to
J. B. SAYERS,
Port Phillip Packet Office,
489, George-street.
9774

ONLY VESSEL FOR GEELONG.

THE "SCHOONER"
BROTHERS,
Capt. Smith, has room for
20 tons freight, and is ready
to sail on the 18th instant. For
freight or passage, apply to the Captain on
board, at the Flour Company's Wharf, or to
R. M. SAYERS, 489, George-street.
10110

FIRST VESSEL FOR ADELAIDE.

THE "fine fast sailing"
teak-built brig
JACK,
H. J. F. Jencken, Howard Fry, & Co.,
commanders, will sail on the 15th instant,
and will have quick despatch. For freight or
passage, apply to
E. F. JENCKEN AND CO.,
Campbell's Wharf.
9810

FOR PORT FAIRY AND PORTLAND.

THE well-known schooner
ANTARES,
150 tons, John Macnamara,
commander, will sail on the 15th instant,
and will have quick despatch. For freight or
passage apply to
THACKER AND CO.,
441, George-street.
10000

FOR AUCKLAND.

THE "FINE NEW BRIG"
M O A,
231 tons, Captain
Duffy, will sail on the 15th instant.
This vessel has been built expressly for the
Auckland trade, and will always be punctual in
her sailing, and having very superior accom-
modation, cabin and steerage, will present a
favorable opportunity for goods and pas-
sengers. Apply to
WILLIAM WRIGHT,
Lower Fort-street.
9844

FOR PORT NICHOLSON.

THE "MAID OF"
THEIR will sail this
afternoon.
For freight or passage ap-
ply immediately to the Captain, on board, at
the Queen's Wharf; to
JOHN MACNAMARA,
Queen-street.
10089

SHIP SERRINGAPATAM, FOR SAN FRANCISCO.

NOTICE TO PASSENGERS.
ALL luggage is required
to be sent down to the
ship this day; the same to
be properly addressed to the
Shippers are requested to send in their bills
of lading, and pass their duties, this day,
Thursday.
THORNTON AND CHURCH,
Agents.
9928

FOR SAN FRANCISCO.

CARRIES AN EXPERIENCED SURGEON.
THE "fine fast sailing"
ORATOR,
At 600 tons, Captain
Montgomery, will sail on the 15th instant.
This splendid vessel has been built expressly for
the service of the Pacific, and will always be
punctual in her sailing, and having very superior
accommodation, cabin and steerage, will present a
favorable opportunity for goods and pas-
sengers. Apply to
SHEPPARD AND ALGER,
Pier Office, 479, George-street.
9765

SHIP HARMONY FOR CALIFORNIA.

CARRIES AN EXPERIENCED SURGEON.
THE "fine fast sailing"
HARMONY,
At 600 tons, Captain
Montgomery, will sail on the 15th instant.
This splendid vessel has been built expressly for
the service of the Pacific, and will always be
punctual in her sailing, and having very superior
accommodation, cabin and steerage, will present a
favorable opportunity for goods and pas-
sengers. Apply to
SHEPPARD AND ALGER,
Pier Office, 479, George-street.
9765

KATE, FOR LONDON.

THE "fine fast sailing"
British ship
KATE,
At 1,000 tons, Captain
Bennett, will sail on the 15th instant.
This vessel has been built expressly for the
London trade, and will always be punctual in
her sailing, and having very superior accom-
modation, cabin and steerage, will present a
favorable opportunity for goods and pas-
sengers. Apply to
SHEPPARD AND ALGER,
Pier Office, 479, George-street.
9765

FOR LONDON DIRECT.

THE "fine fast sailing"
British ship
JOHNSTONE, A. I.,
J. B. Harrison, commander,
will sail on the 15th instant.
This vessel has been built expressly for the
London trade, and will always be punctual in
her sailing, and having very superior accom-
modation, cabin and steerage, will present a
favorable opportunity for goods and pas-
sengers. Apply to
SHEPPARD AND ALGER,
Pier Office, 479, George-street.
9765

WANTED, for Charter.

A vessel, about 180 to
220 tons register.
JOSEPH S. WILLIS,
Church-hill.
December 4. 9181

FIRST WOOL SHIP FOR LONDON.

FOR LIGHT FREIGHT AND PASSENGERS ONLY.
THE "fine fast sailing"
SECRET,
375 tons, H. Hutchinson,
commander, will sail on the 15th instant.
This vessel has been built expressly for the
London trade, and will always be punctual in
her sailing, and having very superior accom-
modation, cabin and steerage, will present a
favorable opportunity for goods and pas-
sengers. Apply to
J. AND S. SPYER, or
J. T. ARMITAGE AND CO.,
Pier Office, 479, George-street.
9765

FOR LONDON.

THE "fine fast sailing"
British ship
GANGES,
430 tons, H. B. Blanchard,
commander, will sail on the 15th instant.
This vessel has been built expressly for the
London trade, and will always be punctual in
her sailing, and having very superior accom-
modation, cabin and steerage, will present a
favorable opportunity for goods and pas-
sengers. Apply to
GILCHRIST AND ALEXANDER,
700, George-street.
9844

FOR LONDON.

THE "fine fast sailing"
British ship
MARY CATHERINE,
375 tons, H. Hutchinson,
commander, will sail on the 15th instant.
This vessel has been built expressly for the
London trade, and will always be punctual in
her sailing, and having very superior accom-
modation, cabin and steerage, will present a
favorable opportunity for goods and pas-
sengers. Apply to
J. AND S. SPYER, or
J. T. ARMITAGE AND CO.,
Pier Office, 479, George-street.
9765

FOR LONDON.

THE "fine fast sailing"
British ship
HONDURAS,
410 tons, Henry Courtney
Cayser, commander, will sail on the 15th instant.
This vessel has been built expressly for the
London trade, and will always be punctual in
her sailing, and having very superior accom-
modation, cabin and steerage, will present a
favorable opportunity for goods and pas-
sengers. Apply to
GILCHRIST AND ALEXANDER,
700, George-street.
9844

FOR LONDON.

THE "fine fast sailing"
British ship
NICOLA,
554 tons, John Bell, com-
mander, will sail on the 15th instant.
This vessel has been built expressly for the
London trade, and will always be punctual in
her sailing, and having very superior accom-
modation, cabin and steerage, will present a
favorable opportunity for goods and pas-
sengers. Apply to
GILCHRIST AND ALEXANDER,
700, George-street.
9844

FOR LONDON.

THE "fine fast sailing"
British ship
ST. GEORGE,
450 tons, John Jones, com-
mander, will sail on the 15th instant.
This vessel has been built expressly for the
London trade, and will always be punctual in
her sailing, and having very superior accom-
modation, cabin and steerage, will present a
favorable opportunity for goods and pas-
sengers. Apply to
GILCHRIST AND ALEXANDER,
700, George-street.
9844

FOR LONDON.

THE "fine fast sailing"
British ship
WILLIAM JARDINE,
671 tons, William Clement
Duffy, commander, will sail on the 15th instant.
This vessel has been built expressly for the
London trade, and will always be punctual in
her sailing, and having very superior accom-
modation, cabin and steerage, will present a
favorable opportunity for goods and pas-
sengers. Apply to
GILCHRIST AND ALEXANDER,
700, George-street.
9844

FOR LONDON DIRECT.

THE "fine fast sailing"
British ship
PHENICIAN,
475 tons, H. Hutchinson,
commander, will sail on the 15th instant.
This vessel has been built expressly for the
London trade, and will always be punctual in
her sailing, and having very superior accom-
modation, cabin and steerage, will present a
favorable opportunity for goods and pas-
sengers. Apply to
GILCHRIST AND ALEXANDER,
700, George-street.
9844

FOR LONDON.

THE "fine fast sailing"
British ship
MONTAGNE, 611 tons, Henry Courtney
Cayser, commander, will sail on the 15th instant.
This vessel has been built expressly for the
London trade, and will always be punctual in
her sailing, and having very superior accom-
modation, cabin and steerage, will present a
favorable opportunity for goods and pas-
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700, George-street.
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700, George-street.
9844

FOR LONDON.

THE "fine fast sailing"
British ship
HENRY NEARBY, commander,
will sail on the 15th instant.
This vessel has been built expressly for the
London trade, and will always be punctual in
her sailing, and having very superior accom-
modation, cabin and steerage, will present a
favorable opportunity for goods and pas-
sengers. Apply to
GILCHRIST AND ALEXANDER,
700, George-street.
9844

FOR LONDON.

THE "fine fast sailing"
British ship
JOHN FENWICK, commander,
will sail on the 15th instant.
This vessel has been built expressly for the
London trade, and will always be punctual in
her sailing, and having very superior accom-
modation, cabin and steerage, will present a
favorable opportunity for goods and pas-
sengers. Apply to
GILCHRIST AND ALEXANDER,
700, George-street.
9844

FOR FREIGHT OR CHARTER.

THE "fine fast sailing"
British ship
REAPER,
James Rose, commander, now
discharging her inward cargo, and will be
ready for sea in fourteen days. Apply to Cap-
tain Rose, on board, or to
ROBERT HOW,
DONALDSON AND CO., or to
GILCHRIST AND ALEXANDER,
December 11. 9947

FOR FREIGHT OR CHARTER.

THE "fine fast sailing"
Brazil Packet,
200 tons register, is open for
freight or charter to any part
of the world. Apply to
SMITH, BROTHERS, AND CO.,
Sydney, December 12. 10052

SYDNEY FIRE INSURANCE COMPANY.

Chairman, T. W. Smart, Esq.
Deputy Chairman, Charles Kemp, Esq.
Directors,
Thomas Agnew, Esq. (R. M. Roby, Esq.,
Thos. Holt, Jun., Esq. (W. R. Scott, Esq.,
Surveyor—James Hume, Esq.,
Secretary—George King, Esq.

THE DIRECTORS OF THE SYDNEY FIRE INSURANCE COMPANY.

have the pleasure to announce to the public that the following reduced scale of their Rates of Premium:—
Section A.—Sited buildings, 6s. to 12s. per cent.
Section B.—Shingled buildings, 8s. to 12s. per cent.
Section C.—Weather-boarded buildings, 12s. to 18s. per cent.
FIFTY PER CENT. of the Premium will be returned on the renewal, for twelve months, on all policyholders, so that the actual cost of Insurance will be ONE-HALF only of the above Rates.
Application for Insurance to be made to the Secretary, at the Office of the Company, No. 387, Pitt-street.

GEORGE KING, Secretary.

SYDNEY BRANCH

IMPERIAL FIRE ASSURANCE COMPANY,

OF LONDON.

THE undersigned grant Policies at the

reduced rates of Premium.

Spring-street.

SYDNEY RAILWAY COMPANY,

NOTICE is hereby given, that a call

has been made upon the shareholders

of the Sydney Railway Company, by the

Directors, for ten shillings per share, which

is hereby required to be paid at the Office of

the Company, No. 247, Elizabeth-street, Sydney,

on or before Saturday, the 22nd day of

December next.

Dated this 15th day of November, 1849.

CHARLES COWPER,

President.

No. 49-565.

Town Clerk's Office,

Sydney, 11th December, 1849.

CITY ELECTION.

I, GEORGE HILL, Mayor of the

City of Sydney, and Returning Officer

of the Municipal District of Sydney, do hereby

give notice that in the event of a poll being

demanded by or on the part of any candidate,

at the nomination of a member to serve in

the Legislative Council, for the City of Sydney,

the poll shall be taken on Tuesday, the

eighteenth day of December, instant, the

polling at the different Wards will commence

on Wednesday, the nineteenth day of the said

month of December, instant, at nine o'clock in

the forenoon, and will close at four o'clock in

the afternoon of the same day, at the under-

mentioned places.

GIRTS WARD.

A Booth near the Flag Staff, Fort Phillip

BONNIE WARD.

A Booth of Request, Bent-street.

BARRABAN WARD.

The Town Hall, York-street.

COCK WARD.

The Court House, Darlinghurst.

PHILLIP WARD.

The Market House, Hay-street.

GEORGE HILL, Mayor.

By order of the Right Worshipful the

Mayor.

JOHN RAE, Town Clerk.

Town Clerk's Office,

Sydney, 11th December, 1849.

STOPPAGE OF WATER TO THE CITY.

NOTICE is hereby given, that in con-

sequence of the unusually low level of

the water at Leichman Swamp, and for the pur-

pose of securing a supply of this necessary

element to the citizens, the supply of Water to

the city will be cut off, until further notice,

from six o'clock in the afternoon until six

o'clock on the following morning.

By order of the Right Worshipful the

Mayor.

JOHN RAE, Town Clerk.

Town Clerk's Office,

Sydney, 12th December, 1849.

TO FENCIBLES AND OTHERS.

NOTICE is hereby given, that Tenders

will be received at this office until

Monday, the 17th instant, at 3 o'clock p.m.,

for fencing in the Water Reserve, at Leichman

Swamp, with a substantial four-railed iron

bar fence. The tenders to state the rate per

rod at which such fencing will be erected.

Full particulars may be obtained at the office

of the City Surveyor, Town Clerk's Office.

JOHN RAE, Town Clerk.

Kent-street,

Sydney, 23rd December, 1849.

MUDBRANK AND COOK'S RIVER

ROAD AND TOLL GATE.

TENDERS will be received at Mr.

THE SECOND AUSTRALIAN

BENEFIT INVESTMENT AND BUILDING

SOCIETY.

THE success that the First Australian

Benefit Investment and Building So-

cietv, established in this colony has met

with during its brief existence, exceeds the most

optimistic expectations of its promoters. It was

formed in July, 1843, in eighteen months en-

rolled Two Hundred and Twenty-five Members,

lauded Six Hundred Shares, and advanced

the period in its Shareholders. Four

Thousand Five Hundred Pounds have been

raised, and the Society has been successful in

purchase, redemption, and construction, of

property, amply secured by mortgages to the

Society.

The Society having now issued the number

of shares limited by its Rules—it is therefore

resolved by gentlemen who assisted in the

formation of the Society to establish the

second Australian Benefit Investment and

Building Society, on the same plan as its pre-

decessor, and to be governed by similar Rules,

with any improvements that the experience of

the working of the first Society may have sug-

gested.

The object of the second Australian Benefit

Investment and Building Society is the

extension of the advantages of a system

proved in the Mother Country to be most

useful, conducive to the happiness, and the

prosperity of the colony, and to the benefit of

the community, by the accumulation of ad-

vantages, which are established by imperially

analysed, and their practical working under-

stood by the principles and objects of these So-

cieties, and by the means by which the ad-

vantages were realized, and if the system

upon which they are established be imperially

analysed, and their practical working under-

stood by the principles and objects of these So-

cieties, and by the means by which the ad-

vantages were realized, and if the system

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Supplement TO THE SYDNEY MORNING HERALD

THURSDAY, DECEMBER 13, 1849.

LAW INTELLIGENCE.

SUPREME COURT.—TUESDAY, NOV. 27.

Baroness Hla Honor Mr. Justice Tennyson, and the following special jury of twelve—viz., Messrs. A. Wilson (foreman), Arncliffe, Blake, Barton, Branson, Broughton, Brown, Crawford, Cowlishaw, Croft, Cook, and Curtis.

TOWNS v. THE UNDERWRITERS OF THE ISABELLA ANNA.

Mr. FOTHERINGHAM (with whom was Mr. Broadhurst) stated the plaintiff's case: He said, this was an action brought on a policy of insurance, effected by the plaintiff on her share of the barque *Isabella Anna* for a sandal-wood voyage. The policy was a time policy for six months, to be calculated from the 2nd day of February, in the year 1848; it was in the usual form; and the declaration, after setting out the material parts of it, alleges that, during its existence, the vessel was wholly lost by the perils of the sea. There had been originally a second count for money had and received; but the defendant, to this count has paid into Court six guineas, being the premium which he received, and which the plaintiff took out, therefore this count is out of the question now. The defendant has pleaded first, that at the time of effecting the policy there was a wrongful concealment of the state of the vessel, viz., that certain of her timbers were rotten and merely shrouded over, &c.; secondly, that neither before nor after the date of the policy was the ship seaworthy; and, thirdly, a denial that the vessel, &c., was lost through the perils of the sea. This action, which is recover only £100, would not in itself justify a second trial, were it not that the facts of the case will determine many others brought against several underwriters to the same policy, all having been consolidated by a rule of Court. Independent of the amount involved, there is a question of much greater importance to be decided, viz., as to the character of the plaintiff for one of the pleas on record imputes to him the fraudulent concealment from the underwriters the state of the vessel. He could not say it was positive to put such a plea on the record, especially when there was not a shadow of a ground for the imputation. It only shows how unscrupulously the defendant will put every plea on the record that it is possible to place there. That there is such a plea as concealment, is an insult to the plaintiff. The learned counsel said, that before he stated the circumstances of the case, he would caution the jury to discard from their minds all impressions they might have imbibed respecting the case out of doors. It was natural, in a small community like this, that the facts of the case should have been discussed, the more especially as there are at least fifteen defendants concerned in policies effected on the same vessel; each of these defendants no doubt thinks he defends on just grounds, and of course would communicate his views on the subject to his neighbours and friends. He would, therefore, request the jury to pay particular attention to the evidence, and decide according to that alone. Formerly, said the learned counsel, there were companies in the colony who used to insure, and then each member was responsible for the acts of the company; but now these companies no longer exist, but a certain number of gentlemen have associated themselves together after the manner of Lloyd's at home; and like them, agree as many of them to underwrite each for so much on a policy. The same gentlemen pride themselves that they are governed by the same rules—but it will be seen that the gentlemen who have subscribed this policy have not acted like Lloyd's altogether. Lloyd's, he is known, dispute the seaworthiness of a vessel insured with them, unless there be evidence of the clearest and most overwhelming nature of unseaworthiness. In this respect, this colonial little Lloyd's have acted differently from their namesake, as indeed it will be fully proved. The history of the *Isabella Anna* is nearly as follows:—She was originally built as a slave, and as such was captured by one of her Majesty's vessels; at this time she was a schooner. In England she was run upon in 1839, and repaired by Messrs. Curllin and Young, the well-known shipbuilders. Her rig was then altered into a barque. Upon these alterations and repairs being made, she was surveyed by Lloyd's agents and surveyors; they gave her a certificate to this effect,—that she was fit for the carriage of dry and perishable goods, and upon this certificate she was classed next to the class A, viz., the class of the red letter A, dipping with an asterisk, a class well known to mercantile men. After she came out here, she performed several voyages, having changed owners two or three times, and was subsequently purchased by the plaintiff and Captain Fotheringham. They at once placed her in the sandal-wood trade; she performed two voyages with success, and was on each of these occasions insured in the same company or association of which the defendant is a member. The sandal-wood trade, he would observe, was a trade well known in the colony; it is one that no one would think of sending a good vessel into; it would not pay to do so. The voyage generally are short. Usually the *Isabella Anna* traded to New Caledonia, which is about 10 or 12 days sail from this port. The learned counsel here referred to Mr. Culloch's dictionary, and read from it a sentence or two, showing what that author's view of unseaworthiness was. The presumption, said the learned counsel, that the vessel was seaworthy, was always in favour of the assured; it lay upon those who imputed that presumption, to make it out; so that here, if there were but one plea on the record, and that going to the seaworthiness of the vessel, the defendant would have had to commence, but as there are other issues, the plaintiff must commence, and no doubt will have the reply. Here, before the vessel went to sea (she cleared the Heads on the 2nd of February, 1848), Captain Fotheringham put the vessel

into thorough repair; those repairs were of such a nature that Captain Fotheringham thought they would make her last for several years. For instance, in carrying out those repairs, it became necessary to put certain bolts in the vessel; copper bolts were put in, instead of iron; the latter are about one-third of the expense of the former; the iron will last but two or three years, whereas the copper will endure for years; 1200 of these copper bolts were placed all over the bottom of the vessel. The several shipwrights will be called upon to do the work, and they will give the details of the work done upon her. The repairs cost nearly £900. It is necessary, however, to mention before dismissing this part of the case, that a stringer or clamp was worked into the vessel, in doing so almost all the timbers of the vessel were bored; the borings showed that almost all these timbers were sound, astonishingly so; and more so than could have been expected, when the age of the vessel was remembered; no doubt some of the timbers were found to be bad and rotten, these were removed and good ones put in their place. No more, however, were found bad than are to be found in other vessels, whose seaworthiness none for a moment would question. A fair criterion of that vessel's timbers are, he said,—he was happy to say,—now in the colony, and he would put them good and bad before the jury, so that they might judge for themselves. The vessel proceeded to sea on the 2nd of February, 1848, at the time making no more water than any other tight vessel. Scarcely had she proceeded to sea, when she encountered strong breezes; these afterwards grew into a complete hurricane; the sea, as the witnesses will describe, was terrific, and the build of the vessel was of a kind that ill-adapted her to ride with ease in the heavy sea; she received a very severe raking in the counter, and then the vessel began to leak, and afterwards was placed in a situation so as to be totally lost by the perils of the sea, to her owners. The gale she encountered was no ordinary one; it will be seen that it was one of those customary hurricanes that visit the islands of this coast. The only wonder is that the vessel ever outlived it, indeed to quote from an article written about the self-same hurricane, and its effects on the other ships, in the *Herald* of the 30th March, 1848, she would not have done so, "had it not been for her beautiful model, her ease and buoyancy in the water." Being thus, through the perils of the sea in a leaking state, she made for a port in New Caledonia, arriving there, some attempts were made to stop the leaks; from this port she attempted to proceed to Aniam, but had to bear up again for New Caledonia. Here the vessel remained some time, the Captain hoping to get assistance; soon after, two or three vessels did come in, and Captain Bradley (the Captain of the *Isabella Anna*) being a nervous man, and his crew could not get sandalwood, certain documents called surveys, were manufactured; they will no doubt be relied on by the other side. These surveys were held, in order to justify the captain in abandoning the vessel. The learned counsel here referred to the evidence of the several witnesses to show that the gale of wind the vessel encountered was more than an ordinary one, and was the one experienced by several vessels on the coast of New Caledonia, whereabout the *Isabella Anna* was at the time. He said he knew that the other side would again rely upon the evidence of Captain Strachan, of the brig *Lythner*, and of certain persons on board that vessel, to show that a greater portion of the *Isabella Anna*'s timbers were discovered to be rotten, when she was abandoned. These same witnesses, he the learned counsel said, he had no objection in saying had been guilty of direct, corrupt, and wilful perjury, and he would undertake to satisfy the jury such was the fact before the case was concluded. This much he might say, that if their evidence were true, the vessel could not have ridden the hurricane out, but could not have floated a quarter of an hour in an ordinary breeze. He next referred to the conduct of this same Captain Strachan, who, he said, had so worked upon Captain Bradley, as to induce him to sell his ship to him (Captain Strachan) for £50, and who afterwards, as he himself confessed, made some £400 or £500 by his bargain. Since the last trial, the plaintiff, knowing what had been sworn a that trial was false, sent a vessel to the wreck of the *Isabella Anna*; in the vessel competent persons were sent, and they were told to act according to certain instructions. To these persons were given the evidence of some of the witnesses who had given evidence against the plaintiff; what particular parts of the vessel those witnesses had described as being unsound, these they were to secure and bring up. They were not to pick and choose, but were to bring them up good, bad, and indifferent. They had acted faithfully up to the letter of their instructions. It has now been discovered that portions that had been described as perfectly rotten and crumbling away, were brought back in a remarkably sound state. The nature of the evidence these witnesses would give who had lately visited the vessel was next referred to as contradictory of the evidence of most of the defendants' witnesses as to what they said at the last trial as to the unseaworthiness of the vessel, and as showing that Captain Strachan prevented the plaintiff's agents from collecting all the timber, by having burnt the vessel to the water's edge. These timbers, said the learned counsel, cannot lie, they are of no doubt; they can be seen, and at the proper time, an application will be made for the jury to inspect them. At least eighty of the timbers have been brought up; these, said he, he had seen, and now could speak more confidently as to the case, having so seen them, than he could do on the former occasion. He now felt that justice was on the side of his client. He then commented upon the course of conduct adopted by the underwriters and

their surveyor, Mr. Korff, in keeping witnesses on pay, in order that they might be able to give their testimony in the cause. He also referred to the conduct of Henning and Bartlett, the carpenter and an able seaman of the vessel, who, because they found that Captain Fotheringham would not pay them wages, (they being on lay) went over to the enemy, having been told that if they could make out the vessel unseaworthy, they would have no occasion to seek after wages, took their cut, and have acted accordingly. It will be proved beyond a shadow of a doubt, that the timbers brought up belonged to the *Isabella Anna*, many of them speak for themselves, some may not, but these will be proved by a scientific witness, as belonging to the vessel. An offer has been made to the underwriters, which he said he would again repeat, which is, that the plaintiff would postpone the trial, so that they might go and fetch up the remaining timbers of the vessel. The former offer had not been accepted. He proposed also now, that when all the evidence had been taken in the case, the jury should, with the sanction of his Honor, be allowed to go and see the timbers, now stored in a bonded store in Sydney. He had even now no objection to his learned friends seeing them at once; but would not allow them to be seen by Mr. Korff, or indeed by any of the witnesses that will be called for the defence. From the relevant thing about it. This case, he said, was the most important case ever tried in the colony, with the exception of the Bank case. The plaintiff had brought his case to the only tribunal he could; he only wanted the case to be tried honestly and fairly, and was confident that the jury would give it their best consideration upon the evidence—dismissing all impressions that may have been received out of doors. He, the learned counsel, said, he would prove that satisfactorily, that the vessel was seaworthy when she left the port on her intended voyage, and would have performed it but for the perils of the sea; did he do this, he did all that was required of him (Phillips v. Nairn). He could not letagine that the other side would attempt to prove their insulating plea of concealment—being well assured that they had too much tact to attempt such a thing, and therefore he would say nothing about it.

The following is an outline of the evidence adduced on the part of the plaintiff.
Mr. FOTHERINGHAM: I was part owner of the *Isabella Anna*; I bought her in June, 1846; I bought her at public auction, for £1700; I had heard she was once a slave; new vessels stand A1 at Lloyd's; the *Isabella Anna* at the time I bought her stood E1; I bought her with an asterisk, denoting that she could carry any perishable cargo; whilst I bought her she was examined by myself, in company with a person of the name of Andrews; it is the course of that examination I saw her planking inside and outside; I sent her at once to the Sandalwood Islands; I, after the sale, immediately before the voyage in question, put her on the Patent Slip; I saw all her planking; she was dubbed all over, which means cupping with an adze; what was found defective was taken out and replaced; several pieces were taken out; some for instance on the starboard bow; where the planking was removed, I saw the timbers; I saw the first and second futtocks principally; they appeared to be very good; the hull rose up; from the lower part of the wales upwards appeared new work, and of African oak; it is the best wood; the wales are immediately above the copper; the new work was London work; all the top-sides, &c., were of African oak; we doubled her in the upper part of the bottom, by working a two-inch plank over this part; the bottom was cupped first, upon the copper being removed as well as the sheathing; cutting tests the soundness of planks; if they are not sound they would not bear caulking; the timbers were then driven out, they fasten the planks; they were driven out, the sheathing down; the old iron nails were started to put new ones in their place. The doubling was worked on with treenails and copper bolts; the copper bolts went into the frame; they last longer than iron, and are much more expensive; they were not copper, but what we call composition; twelve hundred in all were put in; she had new fastenings put in her where required; she had deck and hold beams; a stringer was worked under the hold beams; it was put there to strengthen the vessel and was worked on with bolts, which went right through the vessel and were elected; the stringer was made of wood; to do all this it was necessary to bore the timber; I saw some of the borings; they were good; she was repaired under my inspection; the whole of her bottom was cupped; the borings the state of the timbers can be ascertained; the ones I saw were generally good for an old vessel like her; the general state of her timbers were good; her timber boards were taken up; I saw her flooring, it was perfectly good; a plank thirteen feet long was taken in the ceiling of the vessel; by this means we saw the floor beams and first futtocks; they were quite good; I saw all her transoms; they are the stern frame of a vessel; I saw her fashion timbers also; the transoms were good, with the exception of a small piece of wale on the larboard end of some of them, which was not of much consequence; the sap was removed in England, but here, where wood is much cheaper, it is not; the stern-post had a defect in it; when the vessel had been rose upon, the stern-post was made longer, and a scarf was worked in it; the scarf was too short, and the worms had got into it; it was cut down when the vessel was on the slip, and a new piece of cedar was scarfed in; it was fastened with large iron bolts to the transoms; the transoms were bored through; they were good; the borings showed it; William Brown was the foreman of the works; the apron is

inside the stem; I did not see it bored; Brown bored it, and brought the borings to myself and Captain Blackland; they were good; when I bought her, her apron had been split by a bolt, but this would not affect the sufficiency of the apron; I have seen part of the apron since it came up from the islands; the part is a lower part than I have described; the wood-ends are even fastened to it now, and have not started; the sheathing and chumam are on it now; about seven feet of the apron have come up; two or three planks are off on one side; she was on the slip nearly three weeks, being repaired under my inspection; I caused every thing to be done to her that was necessary; £600 was expended on her; I thought she would have lasted several years; after being launched, three weeks elapsed before she sailed; she was then very water-tight; she sailed on the 2nd February, 1848; she had new anchors and cable; she did not require pumping more than once a week; the stringer was worked on when she was afloat; she sailed in stone ballast; she would labour more in ballast than with a light cargo, as the weight is so low down. I have seen all the timbers, &c., that have been brought up, in a bonded store, under the charge of a government officer; I was present when some of them were taken from the *Lucy Ann*; these are the same that are in the bonded store; part of the stern-post is there; the upper part of it is burnt; there is about ten feet of the stern post there; it belonged to the *Isabella Anna*; I recognised it by the new scarf I have already spoken of; it is as good as possible; where it was torn off it was good; it was not at all rotten; the new portion was wormed, from the copper having been taken off; the copper had been taken off a long time; there was no mark of a crowbar having been through it; it was quite impossible for a crowbar to go through it; some timber and planks from the larboard bow have come up, and some five or six timbers in all; they are all good except the upper part of one timber, the defective timber would not make the vessel unseaworthy; other timbers from other parts of the vessel have come up; they are perfectly sound; they belong also to the *Isabella Anna*; I saw about fifty timbers altogether; they were principally from the bow; I saw others, the futtocks, &c., from other parts of the vessel; all were good except where the worms had got in, from the copper being removed; I saw six transoms, they are good, except the ends of them as are burnt; the tops of all the timbers are burnt; the transoms were good except a portion, but which does not affect the seaworthiness of the vessel; I saw three beam-ends; there were iron knees attached to them; one of the beams was split, the wood of all was sound; there was no appearance of the beams having waned; I saw part of the shelf piece, as also of the stringer.

The Court was now adjourned.
Mr. FOTHERINGHAM: The timbers on both bows were very close in the vessel; of the starboard bow of the part brought up, one timber is missing; the timbers on each side of the bow are quite good; this one timber would not make the vessel unseaworthy; in every ship there would be some unsound timbers, and even in a vessel before her launch; when she left she was worth about £2000; the crew agreed to be paid by lay, as in the case of whalers; to take away from the wreck the pieces brought up would require force; when she was on the slip I saw no longitudinal slit in her copper; at the turn of the bilge I saw no split in the copper; the new doubling was brought up in the copper; the copper having been taken off; the ceiling appears now to be wormed; it was not so when she was last on the slip.
Cross-examined: I owned half the vessel; it was insured to some extent; I have attended the examination of the witnesses; I was present when Bradley was cross-examined *de bene esse*; I sat close to Mr. Want whilst the examination was proceeding; I insisted on remaining, when I was requested to go, because I had a Judge's order to attend the examination; I was always turned out before; Mr. Korff was turned out at my instance when Captain Strachan was examined; I bought the *Isabella Anna* in 1846; she was not hogged then; I will swear it; nor was she broken in her stern; she was the same as finished in London. At the last trial, I believe I said I was not aware she had been ashore at New Zealand before I bought her; I do not know she had been ashore there; I never saw any indications of her having been ashore during the time she was mine; I believe Captain Ashmore was there, when she was on the slip; I do not know he surveyed her, when last on the slip; I bought her of Simmons; Simmons put her on the slip about twelve months before I bought her; the plaintiff did not call Captain Ashmore at the first trial, to my knowledge; I did not examine her timbers very carefully when I bought her; her ceiling was on, and I could not; a portion of her ceiling was taken off on the larboard side, when she was on the slip the last time. When I bought her, I tried her floors with a picket; Andrews was with me at the time; he saw them, and that was quite sufficient to ascertain whether they were sound or not; during the last repair I examined her carefully to see if she had any defects, and remedied those found; I heard that Mr. Korff was at Wide Bay when the insurance was effected; I'll swear I did not tell Mr. Smyth that I had done everything to make the vessel sound; I may have said something to him about it; I do not remember seeing him about it; I believe I sent a memorandum to him about her; I did not repair her with the view of selling her, but to keep her; Captain Blackland went to look at her; Captain Blackland did say something to me about buying her; he talked of purchasing her when she returned; he saw the vessel; I did not say at the time of effecting the policy, to Smyth, that Captain Ashmore had inspected her, and was surprised at her soundness; I may have said that, upon open-

ing her, she was so much better than I expected, that I expended more on her than I had intended; at my own office, I never I did not tell Mr. Smith that Captain Ashmore had inspected her, or anything to that effect; I never used Captain Ashmore's name; the proposal handed to me is dated the 16th February, 1848; Mr. Smith did not say to me that some of the underwriters had objected to insure her on account of her character. About sixteen men were employed on the repairs, and were distributed over the vessel; I do not remember all their names; some of the men were not called at the last trial; Jackson was one of them; I had him in my office before the last trial; I spoke to him about his work on the vessel; I know he worked there; he was on the starboard side near the main chain, about the main-mast; he worked at a berth about ten feet long; Hawkins worked close aft; I cannot say Jackson worked next to him; I talked with Jackson about a month before the last trial; I had some six or eight of the shipwrights in my office to talk to them; all those men I had in were not called as witnesses at the last trial; Jackson was one of them who was not called at the trial; I asked Jackson where he worked, and how his part showed out; I asked him how he found her timbers. (The answers made by Jackson were objected to.) After this conversation Jackson was not called as a witness; I did not ask whether he put fastenings in her, nor whether he found any of her timbers sound; I saw no rottenness in Jackson's berth; if he found he could not fasten his work because of rottenness, it was his duty to point it out to the foreman or to me; I never asked Jackson whether the timbers were good below the doubling; I did not speak twelve words to him; I did not ask him the condition of the timbers in the bow, nor whether he looked at them; I do not remember Brown, the foreman, coming to me and telling the state of any particular part of the vessel. (What Brown said was objected to, but allowed to be given by Mr. Horner, with a view to test the credit of the witness.) Brown did not tell me anything about the work; I did not say to Brown that the men were to put a piece in and make the best job of it, and not to cut any piece out; nothing to this effect was said; it is not usual to horse the caulking unless the planking is three inches in thickness; I will not swear that two inches and a half planking is not frequently horsed; it has never been done on the ship; I never heard of such a thing; I think some portion of one of the berths was horsed; it requires two men to horse, and it is done with great force; by this means the old caulking is forced in; the edges of the planking is more tried by this means; I did not suggest that the vessel should be horsed; 600 treenails, some spikes, and nearly 1200 bolts were put in her; every timber had a bolt and a treenail in it; I cannot tell how many timbers she had; the bolts through the stringer would go through her timbers; some planking was taken off on both bows; I did not see her sail out of the harbour; she anchored at Pinegut; she may have remained there three days; I cannot say when she left Darling Harbour; what was done at the pump after that, whilst in the harbour, as to not knowing of my own knowledge; she left the harbour on the 2nd of February, 1848; whilst I knew her she dropped a little about the foremast in her hull; Captain Bradley was examined at the first trial; he was not then in Mr. Boyd's employ; he was a witness for the plaintiff; I was examined at the former trial; I have been called upon to produce a letter sent by Captain Bradley to me; I have it not now; Mr. Want has it; it was produced at the former trial; I saw it last in this Court at the trial, and have seen no more of it since; that same letter I had previously sent the underwriters; I had other papers about the vessel; they were sent by Captain Bradley; I don't know what has become of them; I did not see them since the last trial; I believe Mr. Want has the log book; I cannot say where Allen was working; he was not called as a witness at the last trial; I have been active in getting up the case; I was the managing owner throughout; the plaintiff never came near the vessel; it is possible to get the timbers from the bonded store to the Court; some of them could be brought in—others could be brought outside the Court. Her keel was cambered a little; it might be occasioned by being on shore; I was present at a meeting of the underwriters, after the loss, when Mr. Thorne was present; she was rose upon by about four feet.

Re-examined: The worm got into the new wood at the stern-post, on account of the copper being taken off. Camber is a curvature of the keel; all vessels will camber, particularly sharp vessels; the Isabella Anna was a sharp vessel; her shear being straight, I was surprised to see her camber so much, when on the slip; she must have cambered before she was rose upon; it is not usual to caulk sheathing; it is not usual to horse planking under three inches thick, because one man has strength to caulk it; ships floors never become rotten. Captain Ashmore is Surveyor to Lloyd's agent (Mr. Donaldson).

Henry Drake: I have been a shipwright upwards of twenty years; I worked on the Isabella Anna the last time she was on the slip; I worked on the starboard side, midships. After having described generally the work done, he said, I had no occasion to take plank out; I bored plenty of timbers where I was working; the borings test the goodness of the timbers; the doubling could not be put on without boring; my berth extended over twelve feet, and I may have bored twelve timbers; the timbers appeared to be in a very fair state for a vessel of her age; every timber was not exactly good; the timbers held their fastenings well; the treenails led well; they would not have done so, had the timbers been bad or rotten; when she left the slip she was seaworthy; I helped to put in the stringer; the ship caulked well; I bored the vessel to fix the stringer, the borings indicated good timbers.

Cross-examined: About five men worked on the starboard side with me; Hawkins and Jackson worked right aft of me; I cannot say whether the stringer was fixed to the top timbers or the futtocks; a bolt was put in every other timber; the borings I cannot say were all of one colour; I did not take that notice; we drove the old treenails out and made some new treenails; about half were

new holes; I put in about four dozen treenails in my berth, and about half of them into new holes; I examined the borings; they were good; I saw only speaking of what I did; I do not know who worked on the other side of the vessel; Captain Fotheringham has not talked to me about the state of the vessel when on the slip; I know Captain Ashmore; I think he was at the slip when the vessel was there; I saw him once; Captain Fotheringham used to be there every day; I did not horse the planking in my berth; I have horsed planking in the same yard; we do not horse two and a half inch planking generally; we always horse three inch plank; Deering horsed his berth; I do not recollect using any spikes; I used composition bolts.

Re-examined: Nearly one of the men who worked, has gone to California; the doubling was put on below the wales; the borings to fasten the doubling would be most along the second futtocks and below the top timbers; the borings for the stringer would go through the heel of the top timber, or through the second futtock. The borings were good, at least very fair, which I saw, and they held the fastenings well; if the timbers were not sound, the treenails would not lead; I never drove bolts better.

Mr. Forster was allowed to examine this witness again in chief.

Henry Drake: I have seen M'Lachlin; he showed me some timbers in a bonded store.

Mr. Marcus objected to the witness being examined as to the timbers without their production, since it had been shown they could be brought to the Court.

His Honor said, as it would require ten or twelve waggons to bring them, the Jury and the Court ought to go and see them, as well as the witnesses generally. As to the bringing them here, he thought it would be attended with inconvenience.

Mr. Forster said he had an objection to their being seen. The case had been tried before, and if the intended witnesses for the defendants could see them they would not be called. He had no objection to the Jury seeing them now, but objected to defendants' witnesses seeing them before they were called.

Mr. Marcus said he only wanted to have them seen on equal terms. (No arrangement was made about seeing them, and no order was made about them.)

Henry Drake: I have had the timbers pointed out in a Bonded Store; I inspected them generally; they were very good indeed; I saw them last Monday; I saw three timbers in one block; they appeared to be very sound.

Alexander Harper: I was employed about the stern and stern post of the vessel; I saw the transoms; they were good as far as I saw of them; I saw a foot square of each about the centre; I bored them; I took a piece out of the stern post, about six feet long; I put a new piece of cedar in; the old piece was wormed; I cured the defect; I bolted the transoms; the bolts drove well; I saw the wing transoms; she caulked well; I bored for the stringer, on the starboard side; they indicated sound wood; I bored upwards of thirty timbers; we were about four days working the stringer on; I have seen the stern post at the Bonded Store; I can identify it; I saw the new piece I put on about eight feet of it altogether, old and new, has been brought back; it is sawn off at the bottom; it consists of that part, about five feet below light water mark, and a foot below the second gudgeon; the timber looks good; the new piece is good, except that worms have got into it, and has been partially burnt.

Cross-examined: I saw no rottenness about any of the transoms; I did not see the whole transoms; I did not see all the transoms in side; I bolted three of the transoms; there might have been five or six transoms; the stern post may have been about fourteen feet long; Jackson and Hawkins worked near me; I bored the wing transoms; I did not see any of the transoms in the store; Captain Towne and Fotheringham were in the store when I saw the timbers; they spoke to me about them; I have left Fotheringham's employ some time.

Re-examined: I did not require a crew, but to ascertain the state of the timber; I tried the wood with an adze; I chipped some bits off.

THURSDAY.

Mr. Palmer, part owner of the ship, and the following shipwrights—Thomas Acton, Alex. Andrew Fotheringham, Thomas Chivers, Charles Whitaker, Peter Sutherland, William Andrews Henry Deer, and Daniel Callaghan, were severally examined as to the nature of the repairs done to the vessel when last on the slip. They said as far as they were able to judge she was seaworthy when she left the slip; that in repairing her, some few planks were discovered to be bad; that they were taken out and replaced with good; they were worked on a dolly; the borings indicated that the timbers were very good, with one or two exceptions, and that she caulked well. Some of them spoke to having seen Captain Ashmore examining the vessel whilst undergoing the repairs. One of them said the vessel leaked a little when first launched, but took up afterwards. Other said she was tight as most vessels are when launched from the slip. Mr. Palmer said the man Jackson was called the "lawyer," because he was fond of asking unnecessary questions.

The evidence of Ritchie and Healey, also shipwrights, given at the former trial, was read from the notes of Mr. Justice Dickinson, who tried the case on the last occasion, pursuant to leave granted to either side by the Full Court when a new trial was ordered. Their evidence went to the same point as that of the last shipwrights. Healey, on cross-examination, denied that he had spoken disparagingly of the vessel in the hearing of Bartlett, the second-mate, to the carpenter.

William Brown, the foreman of the work, was examined at great length. His examination in chief related principally to the work done to the vessel, which would be struck very heavily in a sea-way; I have seen the stern and apron of the vessel in the bonded store; there are other parts of the same vessel there; when the vessel was on the slip, I saw no longitudinal crack in the copper; had there been such a thing I must have seen it; there was a slight rucking in the copper; this may happen to a new vessel, as in the case with a vessel now on the slip; the Isabella Anna has

a camber in her keel, but nothing extraordinary for such a sharp built vessel; her shear showed no corresponding curve; Hawkins, who worked on the vessel, has gone to sea; the copper nearly covered the whole of the new doubling.

Cross-examined: The borings were good, except one or two; all were good in the stringer; I had no complaint made by the men, except as to one timber; Jackson pointed out one defective timber to me in the after part of the vessel; it was not removed, but the planking was carried on to the next timber; Jackson was not called at the last trial; I tried the timber; I cannot say who else tried it; I think I was called on the stage to see it; I did not say to Jackson "it was very bad;" I do not believe I did say so; I did not see Jackson put his hand into the timber; I did not say to him do not cut anything out, but make the best job of it you can; nor did I say anything to that effect; I do not think my attention was called to it by Jackson; I did not see Jackson pull a piece of the doubling off; Hawkins worked right aft; this defect was in a streak below the wales; I did not strip off above and below to see how far the timber was rotten; I did not say that Captain Fotheringham had told me that we were to put a piece on, and make the best of it, and not cut anything out; Jackson was in Sydney at the last trial, but was not called as a witness; I know Jackson did object to put a piece in and go on with the work, on account of his mate being drunk; he might have objected to me; but I will not swear he did not object to me; Jackson is called a lawyer by the whole trade; I will swear that Jackson did not look down the timber, and then put his arm down and up; Jackson may have shown the same timber to me next day; the decayed timber was no defect to the ship; I have seen first-class ships worse; Captain Fotheringham called in some of the men to Mr. Palmer's office; I cannot say whether Jackson was one of them; Jackson and Hawkins worked right aft, on the outside; Carter and Allen did not work on the corresponding berth on the other side; M'Goy was at work at the after berth; he is at New Zealand; neither M'Goy, Carter, Allen, nor Deering, were called at the last trial; some two new pieces were put in under her starboard quarter; the camber was not right inches; I should not say it arose from her having been on shore; she had no symptoms of having been on shore when she came to the slip; I have been a shipwright twenty-two years; she was not hogged; the bolts through the stringer might go through the top timbers; I have seen the timbers brought up, in the presence of Captain Towne and Fotheringham; they are perfectly sound; I saw them for five minutes; I saw three or four transoms; I saw part of the wing transoms; the store is light, and I could see the timbers well; if a few more days might bring them to the Court; I will not swear the transoms are not decayed in part.

Re-examined: A vessel may go on shore, and never show any appearance of it afterwards; I could not see the Isabella Anna had not been on shore; if the camber had been caused by her going on shore, her shear would have shown it; if one timber in a ship was rotten it would not make her unseaworthy, nor if there were a dozen such spread over the vessel; the timber I saw when repairing her was split, it was a little decayed; the Isabella Anna would have about fifty frames on each side.

The evidence of Captain Rosch was read from the notes of the Judge who tried the case before. That evidence was to the effect that he at New Zealand in 1846, received a part of a cargo of the Isabella Anna, consisting of perishable articles, in good condition. On cross-examination he said his goods were not in the very bottom of the vessel.

FRIDAY.

Captain George Blackland: I have commanded the vessel Isabella Anna; I saw her on the slip in 1847; I had seen her previously; I examined her decks; I had an idea of purchasing her; I looked to the parts where vessels first give out; I found her waterway sound; I went below, and saw some of the upper deck beams; they did not show any movement; I saw her on the Patent Slip; they had finished caulking when I saw her; her bottom appeared sound; I saw one floor head and one timber nearly abreast her foremast; they appeared stout and strong; I was expected to see in a vessel built as a slaver; I did not go near enough to see whether they were sound; I did not like to go too near the bottom; I think Brown showed me borings; they were sound; I took a superficial view of her topsides, they appeared sound; I saw she had camber in her keel; her shear was not broken; all shallow vessels and of great beam camber; the Isabella Anna had that build; the camber was nothing extraordinary; I saw no appearance of her having been on shore; it will produce camber; she appeared to have been rose upon; this must have been done after she had cambered, otherwise there would have been the corresponding curve in the shear.

Cross-examined: I saw the starboard side of the vessel; I did not see if she had a new hull beam in her; I did not look at the lower deck beams; I saw all I wished to see; Captain Fotheringham might have known that I went to see her as an intending purchaser; I avoided going too near for fear of accidents; I shing sometimes drop upon people who inspect too close; for aught that I saw, she might have had abundance of rotten timbers; I saw one timber, it appeared sound; her bottom, when I saw her, was patched, and therefore I could not see her bottom; her deck might have been doubled; it is difficult sometimes to find it out; doubling a deck might hide the water-way seam; the water-way seam of the vessel had the appearance of the ordinary water-way seam; I could not tell whether the Becham's was doubled or not; if it were doubled, and the water-way seam worked, it would still show; I did not examine her stern.

Re-examined: The timbers I saw had no appearance of decay; I have seen some timbers in the Bonded Store; I saw them taken out of the vessel called the Lucy Ann; they were all sound, without one exception; I saw two pieces of transom, one of was pencil-wood cedar; she had been built in frame, which is the best, and most expensive way of building a vessel.

Cross-examined again, by permission of the Court: I could not tell which transoms I saw; a shipwright would judge which they

were from their dimensions; I saw about two or three dry loads; they are cut out in large portions, the whole of the lower part of the bow on either side has come up; I saw some burnt amongst the timbers; the portion of the waterway seam that comes up is not burnt; when I said all the timbers that have come up sound it is a mistake; all are not sound; I saw no one completely decayed, nor any one hollow, that a man might put his arm up; I never saw such a thing done in my long experience; the length of the transoms I saw was about four feet; I did not tap them; a timber might be square to appearance, and not so when tapped.

Re-examined: I saw the ends of the timber where they had been sawn, they were sound.

By a Juror: If the camber were produced by going on shore, it would show it in the shear.

Mr. Tompson, chief officer of the ship Harmony: I knew the Isabella Anna; I was sole owner of her once; that is about 1841; before that I sailed in her as master and was part owner, I brought her out from England; in coming out, off Cape Finisterre, we struck upon something, and had to put into Lisbon, we were leaking. Her bottom was stripped, caulked, &c., and repaired there; we examined her; she was opened out, and we had an opportunity of examining her; we did so thoroughly; she was perfectly sound; she was thoroughly repaired; she had several new planks put in her; she was surveyed by Lloyd's surveyors, and everything was done under their directions at an expense of above £3000; she was going fast, when we struck; she was made seaworthy; after this, we had rough weather; we were bound for California; she did not make much water after leaving Lisbon; afterwards we went to Valparaiso, for a cargo of wheat, and brought it here; we landed it in good order. From this, we went to China for tea, in ballast; we returned here; we landed the cargo in excellent order, after this we went to Port Nicholson with cattle; afterwards we came here, and then went to China and Manila; we brought a cargo back here in very good order; this was in May, 1843; we were very deep indeed, as deep as a sand barge; Captain Munro surveyed the cargo each time she came in; the weather we experienced this last voyage was very bad; after this she was sold, in the latter part of 1843; Mr. Johnson bought her; Captain Ashmore and Church used to board her every time we came into port, to look at her.

Cross-examined: She was sold for £705, to the best of my belief; she was sold for sailors' wages; she had been rose upon about the time I purchased her, by Curling and Young, of London; I did not know what her age was; she had been a full rigged ship; we left England in 1839; we had a general cargo on board; she struck violently on the keel; we have her down at Lisbon; we saw nothing the matter with her keel; we found several of the butt ends of her planks started; the most damage was done on the starboard side; she was entirely fresh coppered; we took several pieces of planking out of her run; we took one timber out in her run; it was rotten; I cannot name the timber; this was not the first voyage she made after leaving Curling and Young's yard, when she was rose upon; I bought her as a ship, and altered her into a barque; we took no planking out on the larboard side; these repairs occupied three months; she did not make any water after leaving Lisbon during the time I had her; in fact we had to sweeten her with water; she did not require repairing any more whilst I had her, beyond caulking; I became sole owner of her at the time; he was present when she was sold in Sydney; others had an alleged interest in her by way of mortgage.

Re-examined: We took several pieces of planking out at Lisbon; we found all the timbers but one sound; she was insured at this time; she was repaired according to Lloyd's agent's direction; I had a certificate from him as to her seaworthiness; at Lloyd's they gave her the best certificate they could; in China I was offered £4500 for her.

Mr. Henry Johnson: I purchased the Isabella Anna in 1843, when sold by the Marshall of the Admiralty Court; I gave £705 for her. Captain Ashmore and Munn surveyed her before I sent her to sea; M'Laughlin was the carpenter of her at the time; he was present at the survey. I sent her to New Zealand first; she was absent about two months; she went again, and was absent nearly five months. She was surveyed during this last trip at Hobart Town in my presence; she got on about New Zealand; Captain Hayle and others were my surveyors, and Messrs. Tonkins and Eldridge were the surveyors for the insurers. She was rose down; I saw that her copper was rucked up, and the sheathing appeared loosened; I saw the floor timbers, they were sound; I tried them; some of the planking was removed in the ceiling; she was not then repaired; she was afterwards, at an expense of £200; this was the middle of 1844. I sent her then to China; I went in her; we touched at Anatum; I took a perishable cargo to Hongkong, and landed it in good condition; we had to beat against the monsoon part of the way, from Hongkong to Shanghai; she was surveyed in Hongkong; afterwards she carried government stores; we returned to Hongkong; I tried to sell her, and sought cargo for the colonies; Beard was my captain then; I dismissed him at Hongkong; I took the Mr. Wingfield as my sailing master; we brought down a perishable cargo from thence here; Mr. Maclehoose was one of the passengers; when at Hongkong she had a new beam put into her; upon leaving Hongkong she was tight and strong; some of her ceiling was taken up, to remove some rat holes; after leaving Hongkong we met a terrific gale of wind; when Wingfield was captain, the carpenter did not take off the whole central body; the carpenter took no more off than the pieces I talked of before; nothing was done to enable any one to see all the futtocks, except one one-sixth at each end; where the planking was removed the timbers were sound; ballast would cover the whole of her floor timbers; Wingfield could not have seen the futtocks, &c.; the main deck beam was sound; it was only sprung after the gale; we carried away our mainmast, she laboured a great deal in the heavy sea; the mast was sound throughout; we arrived in Sydney, October or November 1846; her water-way seams were not caulked during the passage; nor did they require it;

we loaded the cargo in good condition; the decks were not caulked at all during the passage; I never saw the deck crew up the cabin; I now sold her in Sydney; I went afterwards in her as a passenger in 1846, to New Zealand; I took a cargo of goods down on my own account; they were loaded in good condition.

Cross-examined: Mr. Lloyd told her to Mr. Simmons; I got six hundred pounds for her; he had sold the cargo first; I did not say to Mr. Lloyd that £600 was low, but I would take it, as she was such a damned rotten old thing, that I would not trust my life in her; I said nothing like it; we landed the cargo in good condition from China; part of it was sold by Mr. Lloyd; I do not know a portion of it was sold as damaged cargo; I will not swear that none was damaged; some few packages may have been damaged; I brought down some tea, four or five hundred boxes on my own account; it was stored in the after hold; not an ounce of that was damaged—none of it to my knowledge was sold as damaged, or by my instructions. All was not sold on the same day; she came down from Hong Kong uninsured; we had passengers on board; young Simmons went down with me to New Zealand in her after his father purchased her; I left her at Auckland; he went on to Tahiti; she complained a little during the passage; they pumped her more frequently, but nothing extraordinary to my mind; we had nothing material in the weather; she was laden very heavily, like a sand-bag; I did not watch the pumping; I cannot swear she was not pumped every two hours during the passage to New Zealand; had the then captain (Captain Rogers) of her said it was necessary to do so, I should have doubted it, and I should be of the same opinion had Mr. Simmons, junior, said so; Mr. Simmons put her on the ship after purchasing her; I cannot say how long she was there; I joined her for New Zealand in Darling Harbour; I cannot say she was not pumped almost immediately upon her leaving the Heads; I do not know whether anything was done to her at New Zealand or Tahiti; I left at Auckland; I did not see anything done there to her; I was on board every day; something may have been done to her; in the passage from China she did not complain at all; from China to Sydney we were thirteen or fourteen weeks; she was to have gone down to Hobart Town; she did not go; we passed Port Jackson and got as far as Twelfth Bay; she turned back and ran for Port Jackson; here I sold her about ten days afterwards. We were short of provisions; this is the reason why we ran back, and did so by the consent of the passengers in writing; we had a terrible gale of wind after passing this port, from the southward, and we lay-to for sixteen hours; she did not complain then, nor make water. I know that Captain Wingfield was examined in this case; I know that he is away from me; I have talked him about his evidence in this case, telling him that he ought to have been ashamed of himself for saying what he did. Captain Hayle, Captain McDonald, and Captain High, surveyed her at Hobart Town; she was purchased there; she was made by the insurers because I made a claim upon them; Tonkins and Aldridge surveyed on their behalf; my claim was not satisfied entirely; I never said to Korr that she had not been at New Zealand in October, 1846, or at any other time.

Re-examined: When we passed Port Jackson in coming from China, we were not compelled to put back on account of the state of the vessel; after selling her I did risk my life in her, and also some of my goods; a vessel requires caulking in her top timbers frequently; before sailing for New Zealand, she was two months in harbour. When I sold her to Simmons her hull was seaworthy; she only wanted a new mast and sails, and without further repairs I would have gone anywhere in her.

Captain Munro: In 1843 I inspected the Isabella Anna in this port; she had a general cargo on board; that is, what is called a general cargo; I saw it all delivered, and every package was sound and free from damage arising from sea water; I surveyed her very minutely after she was unloaded; I examined her timbers; her timber boards were taken up; I found her timbers perfectly sound, as sound as I ever found in any vessel; I bored them with a gimlet, everywhere I could; she was remarkably sound; I had an eye to the purchase of her at the time; I examined her floor timbers also; I should have had no hesitation in buying her; I examined every part I could; I saw all her transoms, they were good.

Cross-examined: I found no defects; I did not examine her outside; I did not open her; had I done so, I should have seen her better.

Captain Thom: I have commanded vessels twenty years; I have been engaged in ship building; I inspected the Isabella Anna in 1843; I did so with the intention of buying her; I went all over inside, as far as I could; I examined her water-ways; they were in a good state; I saw no movement; I saw the main transom; I was satisfied it was sound; the wales and topsides were of African oak; her deck was of pine; her sheer was straight; the floors of ship will never rot, being under water; all ships have some in part decayed timbers; I saw her hold beams; they did not appear to have worked the slightest; that is a sign that the vessel is sound; I have heard of water-ways working an inch and a half, I should say it was not possible; a so situated vessel could not live in bad weather; a ship could not live in a bad sea if her beams worked four inches; if the Isabella Anna's beams worked four inches I do not think she would live in a heavy gale two days, unless rucked with chains; such a built vessel as she was, would suffer more in ballast trim than with a cargo.

Captain Deloitte: I have commanded vessels for twenty years; I inspected the Isabella Anna during the passage; I had then an intention of buying her; I saw her beams; they had not worked; I was satisfied with her appearance generally; I did not examine her minutely, not being satisfied with her build, she would not carry sufficient for my purpose; her timbers exposed were few; her sheer was not broken; she was not hogged; water-ways means will indicate soon immediate working; her's did not indicate any working; she appeared to me sound, considering her age; I saw some timbers to-day in the bonded store, they are sound and stout for the Isabella Anna; all are sawn off in sections; the sawing indicated sound timbers.

Cross-examined: A vessel may go ashore and not be hogged; a longitudinal crack in the copper would indicate her having been on shore, or having worked; such an appearance is very unusual.

The policy of insurance was now put in, and considered as read.

The de bene esse examination of Captain Dewar, of the barque Statesman, taken by the defendant, was put in and read for the plaintiff. It contained, not since the last trial, was examined in the case; he was at the time of the examination in the employ of the plaintiff; he stated that he had boarded the Isabella Anna at a port in New Caledonia, during 1848, and from the survey he made he pronounced her seaworthy; he admitted having written his opinion, then formed, on a paper or document furnished by Captain Bradley; (that paper was not produced when called for at the examination, though notice to produce it was admitted.) He proceeded to specify the particular decayed parts; he was of opinion that the vessel had been seaworthy six months prior to the time he saw her, and would have been seaworthy to have performed a six months' sandal-wood voyage had she not met bad weather; could assistance have been procured at New Caledonia, he was of opinion that the vessel even then could have been partially repaired, and sent on to Sydney. When pressed, he would not say absolutely that she had been seaworthy before meeting the bad weather; he admitted having pulled a bit off one of the transoms with his hand.

The evidence taken de bene esse, on the part of the plaintiff, of a seaman of the name of Bowles, who had been on board the Isabella Anna, was also read: He said that when the vessel first left the harbour, she was pumped twice a day only; afterwards the wind increased from a gale to a hurricane on the 16th day out, and that then she was pumped often. He said, also, that in entering one of the harbours at New Caledonia, the vessel, going at seven knots an hour, struck, and stopped her way; a sea-gale was erected to ease the men in pumping her.

SATURDAY.

The greater part of this day was occupied in reading the evidence of witnesses taken either de bene esse, or from the notes of the Judge who last tried the case.

The evidence of Captains Patrick, Richards, and Elliott, was read; it went to prove that about the middle of the month of February, 1848, they being near New Caledonia, experienced very bad weather.

Mr. Thomas Campbell: This gentleman was examined de bene esse on the part of the plaintiff. He stated that he was chief officer of the Isabella Anna during the voyage she was lost; from the time he joined the vessel until she sailed on the 2nd February, she scarcely leaked at all; on the first day after leaving the harbour she was pumped once, on the second, twice; after being a few days out a gale of wind sprung up, the sea ran high, and sail was shortened, and for some time she was hove-to; during the height of the gale, the ship laboured much in the sea; on the 15th day out, the wind blew in terrific gusts; on this day, she leaked very much; on the 14th day out, the wind blew terrifically; he said he had never seen heavier weather in his life, and that in his judgment the vessel was in a very bad state; he had performed the voyage in ordinary weather. Upon cross-examination he said, he thought he was compensated for the last trial by the defendant. He was cross-examined very closely as to the time of times the vessel was not pumped prior to the gale, and he would not swear she was not pumped much often than he said, when examined in chief; on the 10th day out, he would not swear the vessel was pumped every two hours; he heard the men go at having to pump so often; they lost no boats, though carried on the davits, and no spars; he could not remember whether on the 15th day out he would not be pumping with both pumps every two hours. When the vessel came to anchor off New Caledonia, she was found to be very leaky—a leak was discovered under the starboard main chain; another leak was discovered in the run near the keelson; whilst the vessel was at Numea she was pumped every four hours; the vessel attempted to make for Anatam, but through leaking so much, she was forced to return to port (Coronation Bay). She afterwards went to the port of Canella; whilst there the Spy, Statesman, and Lynher came in. The captain and the officers of the last vessel inspected the Isabella Anna there; it was not a close inspection, though entered as such in his log-book; as it is entered in that book, he said, it is not true; he admitted the effect of the survey, which was to the following effect:—"Canella Bay, July 15, 1848. We, the undersigned, the master and officers of the Spy, Lynher, together with the captain and carpenter of the Isabella Anna, have this day been called upon by Captain Bradley, of that vessel, to inspect and survey the state and condition of the said vessel; which, after a close investigation, we find the stern frame and main transoms entirely decayed, floor and foot-hook timbers in the same condition, plank flooring and lining in a rotten and decayed state; ship leaking, and otherwise unfit for sea. We are therefore of the decided opinion, that it is utterly impossible for such vessel to proceed to sea, or to be removed from hence. Moreover we can be upon oath that we have held this survey without partiality or prejudice to the vessel or to the owners thereof. We therefore unanimously join Joseph Bradley in such a case of extreme necessity in condemning the said vessel; and the crew, &c., of the said vessel, to be put on shore, and to be taken care of by the said Joseph Bradley." Upon re-examination, he said the examination could not have been a close one. He was very ill about the time of the last trial, and therefore did not attend it.

The de bene esse evidence of Captain Bradley, of the Isabella Anna, was next read. He gave the same account of the ship and the weather as the last witness. The vessel did not leak more than usual until the 5th or 8th day out, when the wind was high and there was a cross sea, which caused her to labour, and which struck her severely at. Afterwards the wind became higher, increasing almost to a hurricane, so that the vessel was hove-to and eased of her yards and top-gallant masts. At this

time the leaks increased, and attempts were made to stop them. Afterwards he said the vessel, on entering Coronation Bay, struck on a reef and there hung for a short time, and was damaged. From this place he took her to Canella; she was then in want of repair, and was not fit to go to sea without, but without assistance it was impossible to repair her; the distance could not be procured there; he said he thought the vessel was seaworthy when she started on her voyage, for a six-months' sandal-wood voyage. When she was damaged, he said as soon as he got up, so he had to increase the number of the times of pumping her in the course of twenty-four hours. Before he left the harbour near Point Coronation, he said that he found some of the planks had started, and that several of the timbers were broken; he put into several harbours at New Caledonia, Canella being the last; while here, the brig Spy came in, and the Captain of her (White) made a survey of the Isabella Anna, which the witness kept; on the day of this survey, he said he wrote the following letter to Captain Phingraham:—

Isabella Anna, May 11th, 1848. Dear Sir, I have had the ship into harbour at the north-east coast of Canella, in consequence of her leaking so bad that I could not prosecute the voyage. The crew have left the pumps for five days before I bore up. Her timbers are so bad that all the fastenings and the planks are loose off about three quarters of an inch from the garboard streak, abreast of the mainmast, and the ship cannot be sent to sea without a mainmast and two new transoms. Should you receive this letter he kind enough to send me word what you will do with her, and much obliged, yours, &c., J. Bradley, P.M.—Should I get an opportunity of sending direct, I will give you a further account of it. To Captain Phingraham, Sydney, New South Wales.

He said, for the five days before bearing up for New Caledonia, the men scarcely ever left the pumps; he could not tell whether all the fastenings of the vessel were as bad; on the 11th of May the vessel was not fit to go to sea but whether she wanted two new transoms and a number of new timbers he could not tell; he could not say the vessel was very rotten; he could not recollect whether he had not said as much; he said he could swear one timber in the vessel was sound; he would not swear that two timbers were entirely sound; the vessel leaked very badly before striking on the shoal; he would not swear that he did not see his carpenter with a chisel in his hand put his arm tight up one of the vessel's timbers; he did not remember whether he had said he did on the first trial; if he had so, he could not swear that what he said was false; he denied that the Lynher's people made a close inspection of the vessel, though he made a memorandum to that effect in the log; after the Isabella Anna was put on shore, he said he did not see that many of her timbers were rotten; some parts of them were rotten only; he did not find that any of her timbers were absent; he would not swear that he had not seen them; he denied that he had ever said to one Sommerville that the vessel had not one sound timber abreast the mainmast aft; he also denied having said to the same person that the vessel was rotten enough, God knows. Upon re-examination he said, though the vessel was seaworthy at starting, she ceased to be so through bad weather; the timbers, though not entirely sound, when exposed to the water, were so rotten that they were not fit to be used; he made no inspection of the vessel; when written, he did not think his letter correct; he wrote the letter from what the captain of the Spy had said and written, and in order to induce the owners of the Isabella Anna to send down assistance; she was tight when she left the harbour of Sydney; when the survey was made, the ceiling in the coal-hole was not stripped; the vessel had been hove to, and she might have been repaired at small cost so as to be brought up to Sydney to be repaired effectually.

Captain Silver's de bene esse examination was to the following effect: In the middle of February, 1848, he had the command of the Castlereagh schooner; she and some other vessels were driven on shore at Leefoo, through the effects of a hurricane at that time. Afterwards, and since the last trial, he took charge of the cutter Lucy Ann, and went to the wreck of the Isabella Anna; she was found broadside on the rocks; all her lower masts were standing; McLachlin was the carpenter of the vessel; the crew of the Lucy Ann commenced to cut away portions of the wreck; they cut away a portion of the water-ways; the day after this operation was commenced, Captain Strachan, of the Lynher, arrived in the Bay, and told the witness to desist cutting the wreck, as he had purchased it, and threatened to shoot the first man that did so; he offered to sell her, and whilst doing so caused her to be set fire to, in two or three places; the vessel by this means was partially burnt; she was set fire to at low water, and it was only at low water the crew of the Lucy Ann could continue the operation of cutting away portions of the wreck; the sailors tried to get on shore with their knives, but could not get them in; this was before the vessel was burnt.—On cross-examination, he said he had been employed by the plaintiff to go to the wreck; he expected to be paid for so doing; he was not paid; he had the command of the vessel; he commenced cutting the wreck before Captain Strachan came into the bay; whilst the vessel was burning, Captain Strachan took some iron out of the vessel; by the means of the fire he was able to get on shore; he got a cut first abreast the mainmast, then in the bows on both sides, which include a portion of the hood-end and apron; about a dozen cuts were made on the port side; he saw very good timbers in part of the vessel; he did not find that any of the timbers were missing or quite hollow; he brought away part of the stern post and part of the wing transom.

Re-examined—The vessel was not broken up; she was perfect, except as to the sheathing and one plank; all this took place in May and June 1849.

The Herald (one of the editors being the defendant), giving the account of the wreck of the Isabella Anna, was put in evidence and read. The same paper also gave a description of the terrific weather the vessel experienced (calling it a hurricane) in February, 1848. This was the same paper the learned counsel read in his opening address.

Thomas Woolner: I came down from China in 1848 in the Isabella Anna; Wingfield was captain; we had bad weather on the passage down (he gave the same account of the voyage and ship as did Mr. Henry Johnson.) I did not see the waterway seams caulked, nor did I see that the caulking was spewed up during the voyage; she was seaworthy at the time I was on board, as far as I could see; she did not leak more than a vessel of her age does; I was on board several times before she sailed; we were bound for Hobart Town, but did not proceed because of an adverse gale and being short of provisions.

Cross-examined: In bad weather she leaked more than in other weathers; during the southerly breeze she did not complain; she was not heavily laden.

MONDAY.

Captain Tanner: I was master and owner of the brig Sophia; I have been in the China Sea; I have experienced hurricanes; their influence will extend 600 miles; in February, 1848, I was off Broomanga, and experienced very bad weather; it commenced on the 10th of February; we had to reduce all canvas; the hurricane struck and put us on our beam-ends; the weather might be similar at a great distance; a hurricane will travel 100 miles an hour.

Cross-examined: We pumped every hour; the bad weather lasted three days and a half; we had little or no canvas except that which was necessary to keep her from the trough of the sea; there is a great difference between a gale and a hurricane; but that which we had was a hurricane; it was not such a very long, as it was the duty of a log-keeper to do. February is a hurricane month, and they ought to be expected at that period; we carried our boats on the davits; the Sophia is a stiff vessel.

By Juries: On the 13th we had the heaviest of the weather.

Captain Seagrove: I had command of the Sarah in February, 1848; I was in company with the Castlereagh in that month; I encountered a hurricane in Leefoo Bay; the latitude of that place is 21° and longitude 167°; it commenced on the 11th—on the 12th it was a heavy gale; we housed the yards; both anchors and chains were out; the weather did not abate until the 14th, at midnight; it blew the worst on the 13th, at noon; I was sheltered; I could not see the sea; my vessel went on shore, though we had cut away our mainmast; the Castlereagh was totally wrecked; we were wrecked also.

Cross-examined: If at sea I should not have taken in my boats, had I a good vessel.

Captain Neatby: I have command of the Waterloo; I know the plaintiff's bonded store; I have examined some timbers there; I saw parts of several timbers there, viz., parts of two beams, and sundry other parts; I saw part of the stem and planking; the latter was attached to the timbers; I saw part of the stern post; some were good and some bad; they appear to have been partially burnt; I tested them with chisel and adze; many of them appeared to be very good, and some very indifferent; the average condition was better, than from her age and class I could have expected; the stern-post was wormed, and apparently recently; I saw some new wood in the stern-post; worms will get into wood in the course of three days, when exposed to the water, more especially when it is sometimes wet and sometimes dry; where the stern-post was sawn off it was sound; the beams did not show that there had been much working; I saw a part of the waterway seams; they had not worked much; every vessel will work a little there; from what I saw, I should say she had not worked more than ordinary; every vessel will have some unsound timbers, and may be seaworthy with them; as is the case with many thousands of vessels afloat; supposing a vessel to have such timbers on the average as I saw, she would be seaworthy, and could have gone round the world; the timbers are stout for such a vessel.

Cross-examined: The vessel I saw was about 6 feet long, the stern-post about the same length; I cannot well judge as to the working in the waterway seams, unless I saw the vessel in a whole; some of the timbers are good, some bad; more than one is bad; I saw parts of forty timbers; by "bad" I do not mean "rotten" but defective; in repairing I should take them out; I saw very little rotten.

Re-examined: I know McLachlin; he pointed the timbers out to me.

Angus McLachlin: I know the Isabella Anna; I was carpenter of her when she belonged to Mr. Johnson; in May last I saw her at Canella; I did not see her on the 21st of May; the vessel was starboard side on a hard and rocky beach; under her stern there was ten feet of water, and forward about three feet; her lower masts were standing; her rigging was off; I boarded her on the 21st, accompanied by Captain Silver and two men of the Lucy Ann; I surveyed the vessel on the 23rd of May; I received particular instructions as to what to do; Captain Silver, myself, and the ship's company surveyed her; I examined her stern post to see if I could see a sign of a crowbar through it; I could not do so; the sheathing was not off; I examined the wood-ends aft, starboard and larboard; they were in a good state; they had not started; I examined her wales and topsides, they were very good; there was no appearance of their having worked; I examined the wood-ends foreward, they were very firm; there was no movement, not even in the pitch; I examined the water-way seams, it was good; I tested it with a knife; the sheathing had been taken off the deck; the deck bolts had been taken out before I saw her; there were no appearance of working in the seams; I tried it right round; I could scarcely get my knife in the seams; the others tried the seam in the same way; I examined her stern frame, it was very good as far as I could see; if I could not see all parts of the transoms, she had not right; what I did see were good; no part of the stern frame was afloat; I could not see the ends of the transoms, they being planked; her hold beams were very good, they showed no movement; a portion of six timbers was exposed abait the fore-rigging on the larboard side; the ceiling was off, and by this means I saw the timbers; they were good; three frames of timbers aft, starboard and larboard, I also saw; they are called fashion timbers; seven or eight planks were removed in the ceiling; no other timbers could be seen besides those I have mentioned; I saw eighteen timbers exposed. I saw the coal-

ole, it was nearly filled with coals; I cleaned it out when I began to cut; the plank ceiling was not off; I could not see one timber in this part; there was no appearance of the ceiling of the coal-hole having been cleaned; we then began to cut different parts of the vessel. before I made a cut into her before she was fired; it was not removed; he set fire to her in three places, viz., in the transoms, at the main and foremast, between decks; I went alongside next day, but did nothing; she was burning for three days; I waited until he went away; afterwards I went on board again and commenced cutting again; she was burnt down to the second futtock; I numbered the sections as I cut them; I removed the stern and apron, and planks and timbers attached to it; I cut as low as I could; the white marks on the model (the model furnished by the plaintiff) show the sections I removed; there were fifteen timbers from four to five feet long in the first cut I made (which was numbered 16); cut No. 1 contains the stern and apron, and a portion of the timbers attached; No. 2 contains four timbers, from four to six feet in length; No. 3 contains eight timbers, seven feet long, about the rigging on the larboard side; No. 4 contains four timbers from five to four feet in length, consisting of floor heads and first and second timbers; No. 5 contains topside and wales, this fell overboard when she was burning, and I fished it up afterwards; this consists of seven timbers, seven feet, eight planks six feet long, I could not go to the top of this side of the vessel, besides the above, all having been burnt; the piece that fell over was twenty feet long; I cut No. 6 from it; No. 6 consists of four timbers, abreast the mainmast, in length from five to six feet; No. 7 consists of four timbers; No. 8 consists of two timbers abreast the mainmast; No. 9 consists of four timbers close aft, from three feet and a half long; No. 10 consists of the transoms; I forced the last off with a crowbar, having no footing for sawing; No. 10 consists of three lower transoms, three burnt pieces of transoms, and stern post; I had great difficulty in cutting away the stern post; I was obliged to rig out stages; we cut below the second gudgeon; I saw no mark of a crossbar there; there is eight feet of the stern-post; No. 11 consists of the crutch in the run, it is eleven feet long, a part of it was under water; No. 12 consists of four timbers three feet long, close aft, on the starboard side; No. 13 consists of five timbers of the top side five feet in length; No. 14 consists of timbers from five to six feet; No. 15 consists of three timbers and staple standard beam; the planks are attached; I brought all the timbers to Sydney; I put them in the bonded store, and they are now there; Captain Neesby saw the same, and so did Captain Deloitte; I have seen them at different times in the same store; I have brought up the timbers on each side of the coal hole; I brought up these particular portions owing to instructions; I made no selection; I brought good and bad; I did not select them because they were good; those left are as good as those brought back; those brought up are very good; I have tested them with an adze and chisel; I dubbed them; all the ends were cut perfectly good; I drew a chisel a quarter of an inch into the centre part of the timber to see if it were sound; I opened the vessel inside, by taking the ceiling off the timbers, down to the floor heads from stem to stern; by this means the floor heads—the first and part of the second futtocks—were exposed; she was lying higher out of the water at the bows, than aft; the tide rose and fell inside the vessel; I was four months down there; I could only work at low tide; the planks, ceiling, and doubling are attached to the timbers I brought up; the worm has got into the doubling and into the stern-post; where the traces was taken off the worms have got into the stern-post; the worm will get into places sooner that are sometimes dry and sometimes moist; I know Love, he was down there when I was there; he was mate of the brig Governor; he was also mate of the Lynher at one time.

Cross-examined: I cannot tell the age of the vessel; she was of Spanish build; I was carpenter of her in 1843, the year Captain Beard joined her as master; I remember her being at the Circular Quay; she was working at her stern when she was there; she was in a good state then as far as I saw of her; I did cut a lister out of her at the wood end on the larboard side of the stern post; I did not then see her timbers; the lister was cut out to make the seams; this did not occupy me more than a day; I know then Mr. Mahon; he was working on the vessel, at the same time, fitting a cabin up; I went down in the cabin where he was working; I could see her deck and beams; they were in good condition; I never saw better; I do not recollect calling Mr. Mahon to look at a place where I was working; I'll swear I never did; not to any portion of the ship; he might have come on the stage; I worked with a chisel; I did not say to him that the place was so bad that I did not know how to make a job of it; or anything to that effect; I did not put my arm in, up, or down, or anywhere; I saw all the timbers; the timber was not decayed where I worked; I did not say to him I could put a marling spike right through her; whilst I was on the stage, no portion of her timbers could be seen; whilst she was at the Circular Quay, the only timbers I saw were the transoms; I did not say I could run a handspike through her; I saw Captain Ashmore there; he did not quarrel with Mr. Johnson, the owner, there; I went to Port Phillip and New Zealand in her after the job I allude to; we were four months away; she was not ashore at New Zealand when I was in her; we went to Auckland; we had cattle on board; we were very tight; her stern-post was about 15 feet long; her stern was about 16 or 18 feet; I did not leave a good deal of rotten timber, &c., behind me at Canella; I did not leave many rotten timbers behind as far as my eye could see; her starboard side was always under water at high water; very little could be seen from the mainmast aft, at low water, on the starboard side; her head lay towards the land; the stern was lowest in the water; I cannot say whether she was bilged or not; I have painted on the model (the defendant's model) the pieces I cut; I saw no timber I could shove my arm up; I have brought up no

such timbers as far as I could see I saw no such timber; not much of the run could be seen; it was always under water at high and low tide; I did not bring up the water-way beam, but I brought up the covering beam attached to it; I did not leave a quantity of rotten timber in the run, not that I saw; what I sounded of it was not rotten; I cannot say whether that part was rotten which I did not see; the timbers I have brought up are sound, except one or two here and there, which are rather soft; I chipped them with an adze for the galleys to see them; I never bored a timber that my instrument would slip into, the heart being sound, and the outside apparently sound; I have not spoken twice to the plaintiff or Captain Turner about the timbers; I gave Mr. Want a statement about them; I have seen them almost every day; the timbers are arranged in the store so that any one can understand them; I did not see any of the top timbers before the fire.

Re-examined: Some of the timbers were so low in the water I was obliged to force them up with a crowbar; I left as good as I brought; I have heard of one piece that is called "Michael's Pump," it is in the bonded store now; it is hollow in the lower side of it; you cannot put your arm in it; it is a good timber to put fastenings in. All the iron knees were taken off her, as well as the bolts, before I arrived there; and by this means water would come in her.

By a Juror: I brought up only that which I was directed to bring up.

Charles Cunningham: I went down in the Lucy Ann to the Isabella Anna; we examined her wood-ends, forward and aft; she was whole, except the sheathing off her deck and copper; the wood-ends had not started; we examined her bows, the wood-ends were not started; we examined the waterway seams; the carpenter tried them with a knife; they were tight, and would not admit the knife; none of the ceiling was pulled down in the coal hole; no one could have seen the timber there; it was afterwards cleaned out, and we saw none of the ceiling had been taken away. When she was burnt, we went on her keelson and were then up to our middle in the water; before she was burnt, we examined her hold beams, they had not worked; I looked at the bolts, they did not indicate movement; I was in the run; a portion of the ceiling on the larboard side was removed, about six or seven planks of various length; I cannot say any had been removed on the starboard side; the ceiling was removed in the forepart of the vessel also; except in these places no one could have seen the timbers; the vessel was burnt by Captain Strachan after we had examined her when cutting her, we had good opportunity of testing the timbers; we left as good as we brought; we did not pick them. Captain Strachan arrived two days after we did; he threatened the carpenter, saying he would prosecute him, or something to that effect; I did not hear all he did say; he burnt her as far as the water would allow him; the starboard side being under water, we could not get so much timber out of it.

Cross-examined: Strachan took some from out of her when burning; he took one head load away, and might have taken more away had he chosen; I was not on board the Lynher; all the copper that could be put at the water taken away before we arrived; it is because the bolts were rusty, I say there was no movement in the beams; I saw a place below with two pieces of lead on it, over a seam in the port side in the after-run, near the stern-post; I did not bring the timber the lead was nailed to; we could not get them; we did not bring the lead, because we did not want it; Mr. McLachlan might have seen it also; I did not see it until after the vessel was burnt. We only tried those timbers we cut; I saw no place outside where lead or tarred flannel were nailed; inside on the starboard side we could not make any examination; I could see all the transoms at low water, except the two lower ones; when the vessel was burnt, her starboard side fell deeper in the water; before she was burnt, I saw all the transoms; we found the end of the wing transom decayed, but how far down we could not tell; this was on the starboard side. I do not know that the carpenter forced off a piece aft; a portion on the starboard side I believe was forced up with a crowbar; we brought some timber up, near where the lead was, both before and after; it did not bring the timber opposite to which the lead was; I have been in a ship that worked a good deal, so much so that she could not be kept tight at sea; the Isabella Anna, for aught that I saw, may have worked at sea.

Re-examined: I only saw lead on one place, the bottom was covered with sludge and mud; we got the wing transom—what we could get of it—it was decayed partly; four or five feet in length; it might be decayed, and in width about four or five inches; we brought up four or five feet of it; we removed the tank on the larboard side; the tank on the starboard side would have prevented us from seeing the timber; the part of the wing transom brought up is now in the store; we have brought up the pieces marked on the model; Mr. Want came on board and sealed the hatchway down; afterwards they were opened, and the timbers were taken to the bonded store.

Samuel Wellington: I was a seaman on board the Lucy Ann (His examination in chief was similar to that given by the two former witnesses.)

Cross-examined: I tried all the timbers with a sharp instrument; I saw no hollow timber; I saw no part with lead nailed over it; they were more sound than bad; had I called rotten; I did not see one absolutely rotten in the heart; I tried to pierce the timbers to the heart with a chisel; I got further than a quarter of an inch into some; where the vessel was raised we could get further; I could not say we got an inch into them; they were too good for that. I saw no lead; there were some timbers had; her wing transom I saw; her top transom on the starboard side was decayed more than a foot; I could not see all the decay; I saw all the timbers; the worst timber we brought was not half decayed; we went down in the run; the starboard side was under water; no timber was forced out in her starboard run.

Re-examined: The instructions we had were to bring up all, good or bad; the carpenter told us not to handle roughly the bad pieces, so that the rights might be seen in Sydney.

Tuesday.

George Thompson, a seaman on board the Lucy Ann, gave similar evidence in chief to those already examined who had visited the wreck in the Lucy Ann.

Cross-examined: There were two foreigners with us. I will not swear that the planks had not started off five feet above the garboard streak, on the starboard side; I could not have seen so low; we could not discover the state of the vessel there; the wing transom was decayed a little, a few inches; it may be decayed a couple of feet; there are sound and rotten timbers left in the wreck; wherever there is a rotten one, there is a sound timber alongside it. Wellington was with me when I was there; there would be floor timbers amongst the timbers brought up; I saw no parts with lead nailed to them, or with tarred canvass or flannel; had they been there, I think I should have seen them.

Re-examined: I have just arrived from New Zealand; we did not pick the timbers, but obeyed Mr. McLachlan's orders.

By a Juror: The Lucy Ann is about 37 tons register.

John McBride, a seaman on board the Lucy Ann (His evidence in chief was similar to the last witness.)

Cross-examined: I saw no lead affixed to any plank; I saw some oakum spread out of the seams, above the copper; I did not see seams without any oakum in them at all; I heard that there was some lead to be seen; we worked five or six hours daily; I saw no planks started off five feet above the garboard streak; we did not examine all her starboard side; we did as much as we could; I do not think one of her timbers was rotten; I thought they were until I tried them with a chisel; I tried several of them on the larboard side; inside; I tried them abreast the pump well; I tried them for my own amusement, and where I tried them, I think some were not brought up; I was told of the lead, but did not see it; I saw one transom decayed; but no person could see it until we took it up; I think this transom was fastened to the stern-post; I do not think the fire touched the transoms.

Re-examined: All her upper works were burnt, deck and all; I tried some of the timbers for postings, but for postings, except the one, Mr. Osburn; I am a ship builder, and have been so for twenty years; I have been to the bonded store at Town's Wharf; I saw the timbers landed from the Lucy Ann in the presence of Mr. Want; they were marked after they were landed; they are made of American oak; they consist of the fore part of the vessel, topsides, &c.; the coal-hole is there; the lower part of both bows is there; I made a memorandum of the parts at the time.

There are six copper bolts through this part, clenched on the ceiling; there are parts of four streaks of planking fastened to the stem also. No. 2 is now in two pieces; it consists of part of 5 streaks of sheathing and 2 timbers in each piece; the timbers in length are about 6 feet. No. 3 is now in 4 pieces; there are 8 timbers in the 4, and are about 6 feet long, there are also about 8 streaks of planking, and 6 streaks of sheathing. No. 4 consists of 4 timbers and planking; the timbers are 5 feet long. No. 5 consists of 7 timbers, 6 feet long; this was the upper part of the vessel, showing the topside, water-way, and plank sheer attached to it, as well as planking and doubling. No. 6 is in two pieces; it had formerly been in one, it consists of 4 timbers, 5 feet in length, planking and sheathing. No. 7 is in 2 pieces, it consists of timbers 4 feet long, planking and sheathing. No. 8 consists of 2 pieces of timbers, 4 feet long. No. 9 consists of part of 2 timbers, 3 feet long. No. 10 consists of two pieces of timbers; they look like the timbers next the fashion timbers. No. 11 consists of part of the wing transom, three lower transoms, part of the stern post; some of the transoms are bolted to the stern-post; the upper part of the stern-post has been burnt, and the lower has been sawn off; the stern-post brought up is about nine feet long; No. 11 consists of the crutch; it is a sort of a knee fixed to the stern inside; it is about eleven feet long. No. 12 consists of three timbers on the starboard side on the quarter, planking and doubling attached. No. 13 is a part of five timbers four feet long, doubling, planking, and ceiling attached; part of the clamp is attached to this, and also wooden knees and beam-ends, all fastened together. No. 15 consists of part of three timbers, three feet long, planking, doubling, and ceiling, part of the clamp, beam, and wood-end, and stapling attached, all burnt together. No. 16 consists of fifteen timbers, about four feet long, in four parts; the greatest part of the sheathing is on; this is about the part where the coal-hole would be. No. 17 is a beam-end with an iron knee attached; there are two new pieces of new planking on the bow, on the starboard bow. I carefully examined the timbers and planking; I could suppose some of the timbers were futtocks; the timbers are in a much better state than I could have supposed for a vessel of her age; I have seen worse in a vessel 9 or 10 years old; from the timbers, I should suppose she was not more than 25 years old; I examined each timber with an instrument of some kind; the timbers were sawn off; generally speaking the timbers are particularly sound; the planking is all sound, it is worn a little from the washing of the water in the inside; this will happen in every vessel; two of the transoms are sound; two of the lower ones are a little defective; one is made of pecan cedar, the other is made of pine; those that are defective are mere checks, and not of very much consequence; the wing transom, from being a piece of heart, is a little decayed towards the middle, but the remaining part is sound; the transoms were along the run, and were sufficient to hold the bolts. No. 18, which has beam-ends attached to it, showed not the slightest sign of working; this is a part that shows working very soon; I have seen a great many vessels speeded out; in all vessels I have seen rotten timbers; I saw seventy taken out of a vessel not more than five years old; a vessel may be seaworthy and have one or two unsound timbers; some vessels may spare twenty timbers,

and still be seaworthy. No. 15, consisting of the wooden knees, are well fastened; they do not show any symptom of working, even to the sixteenth of an inch; if a vessel worked four inches at the beams, she would not live long in a sea, from what I saw, I should say that the water-way seam had not worked; exposure to weather would have the effect of widening a seam, it would not close it; the stern-post, the original part, was as sound as when felled in the forest; I should be very sorry to have the job of putting a crossbar through it; the worms have got hold of it where the copper has been removed; the inside planking is sound, with the exception of a little sap on the edges; the timbers are from seven to eight inches in thickness; they are framed and built close; they were as close as they could be put together; the crutch was perfectly round; it is not put into all vessels; it serves to strengthen the ship. From the timbers, &c., I could form an opinion as to the vessel's seaworthiness for a voyage; the parts I saw would, with corresponding ones, make a vessel perfectly seaworthy for a fair and ordinary voyage; the timbers were of sufficient substance for a 300 ton vessel; if such a vessel were on a rocky beach for some months, with masts standing and no rigging, I should expect to see her all to pieces in a short time during bad weather.

Cross-examined: I tried the timbers several times with a chisel or adze; they are not all sound, parts of them are not quite sound; in sounding them I found the greater part sound for the ship; I did not bore into them with an auger; the chisel went into some of them half an inch; in others the chisel would not go so far; if a ship were on shore eight or nine days, with the sea breaking over her, and through her, would cause great injury; the portion of the water-way seam did not show the least working of the vessel as having been on shore; I only speak of what I saw in the store; from what I saw I can judge of the residue of the ship; from what I saw, I can also suppose that the state of the starboard run was; the head ends show that the vessel has not worked much; the water-way in the store is not perfect; there is only one side of it; the hold beams I saw apparently come from near the foremast; for aught that I saw the residue of the vessel might have been rotten; I do not remember ever having seen the Isabella Anna; from what I saw of the timbers I should say the vessel was not unseaworthy; I never saw a longitudinal crack in the copper of a vessel; there could not be such a thing unless the plank had parted; I never saw it in a vessel either; it is an unusual thing; I never saw it during all my experience; a number of the timbers at Canella might be rotten; a sound and a rotten timber might be alongside each other; I saw three beam ends.

Re-examined: Both sides of the water-way seam I did not see; all the timbers seem to be of American oak.

Mr. Warden: I am a shipbuilder; the timbers I saw in the bonded store were generally good; I examined them with an instrument; I examined the stern-post; it was sound, especially where it had been cut.

Cross-examined: I saw some of the tops of the second futtocks; which came from abreast the mainmast; it was four or five hours examining the timbers; from the portion of the water-way I saw I could not tell whether she worked, so well as I could were I on board of her at sea; I tried every timber that appeared unsound; boring a timber, I do not consider the best way of testing a timber.

Re-examined: I saw the covering board of the waterway, the seam is missing, the part I saw would show whether the vessel had worked; if the heart of a timber is sound in one place, it would be likely to be sound in others.

Mr. Russell: I am a shipbuilder; I have examined the timbers in the Bonded Store; they appeared bad in some places; I saw the first and second futtocks, at least what appeared to be such; I saw a portion of the planking; Working would show in the joints of the knees.

Cross-examined: I did not see the beam ends of both sides of the vessel. In one section of the timbers, there might be portions of different timbers; I tried to put a chisel in most of them; but could not put it far into them; I did not use an auger in testing them.

Captain Bell: I command the Agrioola; I have been a commander upwards of twenty years; I know a little about shipbuilding. I examined the timbers in the bonded store, on last Saturday; I saw two beams with knees attached to them; I could see the beams had never worked; I never saw a beam bent or fixed in a ship; had they been rotten or decayed, they would have worked; one was firmer than the other; I bored the timbers with a large spike gimlet; I examined the borings, they indicated sound timber; I bored three of the worst-looking timbers. I have seen a good many ships opened; ships always have some defective timbers; a ship having a few defective timbers is not unseaworthy. I saw a piece of the water-way; from it, I could not form a correct opinion as to whether it worked or not; but I think it had not; from what I saw, however, it could not have moved half an inch, sharp built vessels will camber more than those of other build.

Cross-examined: I have seen flooring timbers unsound; it is not an impossible thing; a vessel cambered in the keel from age, the centre of the deck would be higher than the next part.

Re-examined: I have only seen floor timbers decayed from dry rot, and not from any other cause.

The log book of the Isabella Anna was considered as read; it was admitted that the substance of what took place at the time the request was made to see the timbers, was as follows:—the defendant requested of the plaintiff, that he (the defendant) his counsel, attorney, and Mr. Kuff, might see the timbers before the trial, which request was refused as to all, but the plaintiff said he was willing to postpone the trial of the cause, to enable the defendant to fetch the remainder of the timbers from the wreck.

Here, the plaintiff's case closed.

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